

US BANKRUPTCY  
EASTERN DISTRICT

WESTEY SMITH MANDRIOTA and  
TRACEY ALLYSON McCAULEY, and  
KIMBERLY HYNISI,

Plaintiffs,

Against

DANA A. SMITH  
Respondent

Index No. 15-71331

Opposition

Debtor had prepaid lawyer fee and Debtor's lawyer failed to answer and oppose the lift of the stay on May 18<sup>th</sup>.

Debtor reserves the right to Amend the Answer with the qualified substitute counsel. The fair and correct forum for the final answers must be completed by substitute counsel.

The following statements represent the advice of Bankruptcy Attorneys, CPAs, Financial Consultants.

(1) Debtor, Dana A. Smith categorically rejects the slanderous, defamatory claims having no facts or evidence backing up the Plaintiffs claims. (Refer to Answers)

(2) Debtor requests that Court deny the removal of the stay on several counts.

Not only are plaintiffs not entitled to request the lift of the the stay, but their entire action is fatally flawed for several reasons and should be dismissed. Their actions are barred by the Statute of limitations as set forth in CPLR 213(1). The Plaintiffs have no standing..The plaintiffs are not secured creditors and should not have a say on these proceedings. Their actions would be tantamount to a fraudulent conveyance.

(3) The Trust terminated under its own terms in year 2000 and therefore Surrogate Court has no jurisdiction in this matter. (EPTL Section 207 covers this)

Furthermore, the Surrogates Court violated Federal Bankruptcy Code , when they failed to obey the stay. Thus, Surrogate's Court order is Void.

Mr. Macco's is incorrect, since the Surrogate order is Void.

Further advised that a Conflict of Interests exists in Surrogates Court, due to a conflict waiver given in another case, which was not provided in this case( Needs to be addressed)

(3a) Debtor is an owner in Mansion Rental property), since year 2000, when the trust ended, by its own terms stated in Grit

Document. Furthermore, Surrogate Court is not qualified to handle complex tax, partnership and business issues. Moreover, if Surrogate Court orders a sale of the property, tax CPAs advised that there is risk that the tax liabilities will exceed assets in the Debtors estate (4) Title on Debtor's California property, also shows Debtor as an Individual, so Debtor is entitled to a stay.

(4) In the event of removal of this case from bankruptcy court, Supreme Court should have Jurisdiction for the following reasons.

Commercial Division of Supreme Court is qualified, since issues involving Taxes, require Commercial Division Court Qualifications (potential remedies to Capital gains Tax, estate tax, & property tax), to Avoid Catastrophic Tax Impact upon sale of Income-producing property (avoid harm to debtor).

Complex Financial Claims of partnership issues including capital accounts, and unequal distributions and contributions can only be handled in the Supreme Court setting (avoid financial harm to debtor).

(5) Plaintiffs already were defeated by the same case in Supreme Court as Surrogate Court Underlying Case :

Affirmative Defenses:

(1) Statute of Limitations: The trust expired on April 22, 2000, and the within action is barred by the statute of Limitations as set forth in CPLR 213(1). (Refer to Supreme Court win)

(2) Res Judicata (claim preclusion), meant to bar continued litigation of a case on same issues between the parties. (matter cannot be raised again)

(3) Collateral Estoppels

(4) Unclean Hands : Plaintiffs own actions of blocking Tenant Rentals, blocked the Revenue stream with which to pay real Estate taxes, thus creating a tax lien. Plaintiffs own actions represented Tortious Interference with the positive cash flow history (30 years ) of a successful Rental Business. Supreme Court Decision confirms that Plaintiffs had been living "RENT FREE" for over 20 years. Thus, unclean hands. Unclean Hands

(5) Laches & Waivers

(6) Ratification

(7) Bad Faith

(8) Respondent, Dana Smith acted in Good Faith, has personally financially supported Mansion expenses over 30 years. (As Landlord to Commercial Property, since 1981, and subsequent Note Investments and payments of mortgages and equity loans)

(9) Fraudulent Document (refer to rest of Answers)

(6) Conclusive Evidence will prove that Plaintiff, Tracey McCauley has acted in Bad Faith::

- (1) Unclean Hands & Fraud: intentionally blocked Tenant rentals of the Mansion property, thus causing a tax lien, to force the sale of the Mansion, and throw their mother out, for a sale and her own financial gain for Tracey and her husband.. They made arrangements with the neighbor, for a below market deal. (Investigation & subpoenas are demanded). (Recent Surrogate Court admitted to this "side-deal" with the neighbor)
- (2) Shortly after the Supreme Court win, by both the brilliant mother, Gloria M. Smith, and daughter Dana Smith (against Westey Mandriota & Tracey McCauley), mother had an accident

at home and was prevented from returning to the safety of her home, by Plaintiff, Tracey McCauley, through threats. Mother was never allowed to return home and her death resulted from a hospital error. (Further investigation is necessary and lawsuits with claims for 1) wrongful death and 2) pain of suffering on behalf of Gloria Smith and her estate must be immediately initiated by filing a summons with notice by the co-executors. This Debtor request the Bankruptcy Trustee to compel co-executors fulfill their fiduciary duty to of the estate.

(7) A Bankruptcy Experts' Legal Analysis of Petition: There is no evidence and therefore discovery is necessary. (Refer to Exhibits and Debtor's Win in Supreme Court Decisions): Plaintiff's petition is based a completely false assumptions that the trust exists.

Termination of Tax Trust 15 years ago, thus No Trust.

False Document: Falsely includes Commercial Property.

(8) As an Owner/Landlord to this Rental property, Debtor is entitled to a 1/4 share of the rental income to the Mansion property, however, Plaintiff Westey Mandriota prevent the Tenant Rentals, receiving free rent for over 20 years. The blockage would be considered waste and tortious interference of income. In Contrast Debtor and mother have financially funded and subsidized the property for over 35 years.

Supreme Court Decision: Tax Returns confirm Trust termination: Law: "Mahoney vs.

Buntzman": A party to a litigation is equitably estopped from taking position that is contrary to that taken in an income tax return. (Mahoney-Buntzman v. Buntzman 12 NY 3d 4125,909 NE 2d 62,88' NYS 2d 369(2009)

(9) Injunctions: Furthermore, Debtor needs to time for discovery to provide evidence., for false claims.(This will only be handled with new substitute counsel for Debtor) This will show that Debtor is a creditor to

(10). Finally Debtor requests an injunction and a Restraining Order against any harassment upon visiting the Mansion Rental to procure her documents, tax returns, and further evidence to complete the plan. Debtor request restraining order barring the sale or removal of the contents of the estate or the Bruno Land (valuation of the content is critical to Debtors estate) and the real property.

(11) Debtor requests further access to retrieve documents . Debtor also submits the following documents for the Courts consideration.

(i)Verified Answers and Defenses

(ii) Favorable Win in Supreme Court Decision in Favor Dana Smith and mother Gloria Smith

(iii) Evidence: Sample or partial evidence checks demonstrating Dana Smith's support of the Mansion Rental Property

(iv) Cash Flows from Commercial Property to support Mansion

(v) Commercial Property deed

(vii) Evidence showing and accountant verification of Dana Smith wiring in of her own personal account to the closing statement

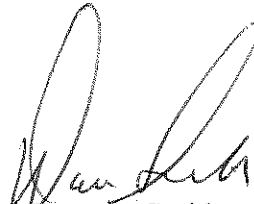
(viii)Personal Checks from Debtor supporting Mansion

## AFFIDAVIT OF SERVICE

STATE OF NEW YORK

COUNTY OF Suffolk SS.:

I, Dana A. Smith, residing at 26664 Seagull Way, Melby, CA 90265  
thereby swear, under penalties of perjury, that on June 5, 2015 I did serve a true  
copy of this Reply Affidavit on Michael Mecco, Esq., attorney of record for the  
Plaintiffs in the above entitled action, by mailing the same, first class postage prepaid, to  
him at 135 Pineclawn Road, Suite 120 Sate  
Melville, N.Y. 11747

  
Dana A. Smith